IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4875 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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MOHAMMAD SALIM IBRAHIM MANSURI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 4875 of 2002

MR RS SANJANWALA for Petitioner No. 1-4

MR KC SHAH APP for Respondents

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 07/08/2002

ORAL JUDGEMENT

1. By means of filing this petition under section 482 of the Code of Criminal Procedure, 1973 ('the Code' for short), petitioners have prayed to quash and set aide

FIR being CR No. III-27/2002 registered against petitioner Nos.1 to 3 at Rangpur Police station, Taluka Chhotaudepur, District Vadodara, for commission of the alleged offence u/s. 70-A and 81 of the Bombay Prohibition Act, 1949 ('the Act' for short). The petitioners have further prayed to release the muddamal gur and truck bearing registration No. MP-09-KB-6891 belonging to the petitioners unconditionally, on the grounds stated in the petition.

2. It is stated in the petition that the impugned FIR being CR. No.III-27/2002 was lodged before Rangpur Police Station against petitioner Nos.1 to 3 for alleged offence u/s. 70-A and 81 of the Act. The impugned FIR inter alia alleges that one truck bearing registration No. MP-09-KB-6891 which was coming from Alirajpur was intercepted and searched on July 11, 2001 by the police authorities and they found 240 gunny bags of rotten gur weighing 12,000 Kgs in the tuck. The driver and cleaners of the truck, that is, petitioner Nos.1, 2 and 3 were called upon to produce any pass or permit authorising their possession of the rotten gur but they failed to produce any pass or permit. Thereafter sample of rotten gur was collected. Since petitioner Nos.1 to 3 were found in possession of rotten gur within the territory of Gujarat without any pass or permit or authorization, they have committed offence punishable u/s. 70A and 81 of the Act.

3. It is the say of the petitioners that the gur in question was despatched by petitioner No.4 who is having his office in Madhya Pradesh State and it was despatched in favour of M/s. Trushna Trading Company having their place of business at Daman. The gur in question was entrusted to the truck bearing Registration no. MP-09-KB-6891 for transportation from Madhya Pradesh to Daman. A copy of the invoice and challans issued by petitioner No.4 in favour of M/s. Trushna Trading Company is annexed as Annexure B to the petition. It is further say of the petitioners that the above documents were in the tuck and were shown by petitioners Nos.1 to 3 to police authorities and explained that the muddamal gur is being transported through the State of Gujarat and it is destined for Daman. It is further say of the petitioners that petitioner No.4 is holding valid licence issued under the relevant laws applicable in the State of Madhya Pradesh entitling them to business in all kinds of jaggery. Copy of the said licence and other relevant documents are annexed as Annexure C collectively to the petition. The above facts were pointed out to the police authorities and all relevant documents were shown to them

however, ignoring the above facts and documents the impugned FIR came to be lodged for the reasons best known to the police authorities. The respondents intercepted the truck while it was in transit and the impugned FIR does not allege any overt act of omission or commission by the petitioners. It is further case of the petitioners that State of Gujarat has issued a circular on July 11, 1995 making it obligatory for the police officers before registering offence under Sections 70A and 81 of the Act to obtain opinion of the Executive Magistrate of the gur in question as to whether the gur in question falls within the definition of rotten gur. In the facts of the present case, the FIR has been registered without obtaining any such opinion. It is also the case of the petitioners that another circular has also been issued by the State Government on January 20, 1995 which inter alia sets out the requirements of the Act and explains the definition of rotten gur under the Act. The State Government having found that both the aforesaid circlers were not being complied with by the police authorities, issued another circular on November 17, 2000 calling upon the police authorities to register offences under the Act to follow the requirements of the circular dated January 20, 1995. The petitioners further state that similar FIRs alleging offence punishable under sections 70-A and 81 of the Act where the gur was in transit through the Sate of Gujarat have been quashed in exercise of powers under section 482 of the Code. So, according to the petitioners, they have not committed any offence within the territory of Gujarat State as the said gur was to be despatched outside Gujarat State at Daman. The truck was only passing through the territory of Gujarat State. Therefore the petitioners have prayed for the reliefs to which reference is made in earlier paragraph of this judgment.

4. I have heard Mr. Sanjanwala, learned advocate for the petitioners, Mr. K.C. Shah, learned APP for respondent Nos.1 and 2 and perused the averments made in the memo of the petition and the grounds set out therein and also the documents annexed therewith. I have also gone through the relevant provisions of the Gujarat Through Transport Rules, 1966 ('the Rules' for short) and various unreported judgments delivered in similar cases by this Court, copies whereof have been supplied by Mr. Sanjanwala, learned advocate for the petitioners during the course of his submissions.

5. Having considered the submissions advanced by the learned advocates appearing for the parties, it can be said that in similar cases which are enlisted below, this

Court has quashed criminal complaints and further proceedings:

(i) Special Criminal Application Nos.4 and 5 of 1986 (decided on 28.1.1986)

(ii) Criminal Misc. Application Nos. 774 and 775 of 1985 (decided on 1.7.1985)

(iii) Misc. Criminal Application No. 4763 of 1998 (decided on 27.11.1998)

(iv) Misc. Criminal Application Nos. 2785/91, 2786/91, 2787/91 and 2788/91 (decided on 25.8.1993).

(v) Misc. Criminal Application Nos.3041/95 and 3044/95

(vi) Cri. Misc. Application No. 482/95 (decided on 10.2.1995)

(vii) Misc. Cri. Application No. 4392/99 (decided on 25.8.1999)

(viii) Cri. Misc. Application No. 4493/99 (decided on 25.8.1999)

(ix) Cri. Misc. Application No. 7606/99 (decided on 17.12.1999)

(x) Cri. Misc. Application No.7673/99 (decided on 21.12.1999).

6. There is no manner of doubt that the truck in question which was intercepted near Ferkuva check post within the jurisdiction of Rangpur Police station by respondent No.2 which was loaded with 240 gunny bags of rotten gur weighing 12,000 Kgs. was to be unloaded at Daman. Moreover, as per various documents, which are invoices produced vide annexures, the facts remain that the goods were to be unloaded at Daman. Therefore, it is obvious that the said truck was passing through the territory for Gujarat State. So far as the offence under Section 70A of the Act is concerned, if the rotten gur were to be manufactured or sold in Gujarat State then and then only the offence can be said to have been committed within the territory of Gujarat State. Therefore, I am of the opinion that the prayer made in this petition deserves to be granted and thereby the offence registered vide CR No.III-27/2002 with Rangpur Police station is required to be quashed and set aside by allowing this petition.

7. For the foregoing reasons, the petition succeeds and accordingly it is allowed. FIR being CR No.III-27 of 2002 registered with Rangpur Police Station is hereby quashed and further proceedings pursuant to the said FIR are also quashed. Rule is made absolute. Direct service is permitted.

8. While directing quashing of the FIR being CR No.III-27 of 2002 and the proceedings pursuant to the said FIR, so far as the muddamal is concerned, following order is passed:

(i) The muddamal gur seized from the truck bearing registration No. MP-09-KB-6891 in pursuance of the FIR being CR No.III-27 of 2002 be released to petitioner No.4 on giving its undertaking to the satisfaction of the Magistrate concerned that the accused shall not store or use or consume the said gur within the territory of Gujarat State and the same shall be taken to its destination out of the limit of Gujarat State.

(ii) The petitioners shall carry the goods in question under the police escort to be given by the police authority at the cost of petitioner No.4.

(iii) The truck bearing registration No.MP-09-KB-6891 shall be released in favour of petitioner No.1 after proper verification.

(A.M. Kapadia, J.)

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